

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554
APR 26 11 52 AM 1996

DISPATCHED BY
MM Docket No. 95-77

In the Matter of

Amendment of Section 73.606(b),
Table of Allotments,
TV Broadcast Stations.
(Virginia Beach, Virginia) RM-8616

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 25, 1996; Released: April 24, 1996

By the Chief, Allocations Branch:

1. At the request of Lockwood Broadcasting, Inc. ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 10 FCC Rcd 6155, (1995), proposing the allotment of UHF Channel 21 to Virginia Beach, Virginia, as an additional television service. Petitioner filed comments reiterating its intention to apply for Channel 21, if allotted. Eure Communications, Inc. filed comments supporting the allotment of Channel 21 to Virginia Beach. Centennial Communications, Inc. ("Centennial"), licensee of TV Station WGNT(TV), Channel 27, Portsmouth, Virginia filed comments. Petitioner filed reply comments.

2. Centennial filed comments opposing petitioner's proposal for two reasons. First, Centennial argues the allotment of Channel 21 to Virginia Beach would be a direct violation of the order freezing the TV Table of Allotments in the areas surrounding major television markets citing, *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, 52 FR 28346 (published July 29, 1987) ("ATV Order"). It states that the city of Virginia Beach is within the freeze zone imposed by the ATV Order because it is less than 154.5 miles from the reference coordinates for Washington, DC. Centennial asserts that petitioner is attempting to circumvent the ATV Order by proposing a reference point outside the freeze zone when the community of license is inside the freeze zone. Second, Centennial questions whether petitioner's hypothetical site or the reference coordinates proposed by the Commission are consistent with aeronautical and environmental requirements, noting that the sites are located within six nautical miles of airports. Centennial contends that due to the proximity of these sites to airports, petitioner needs to provide proof that the sites in question are available.

3. In rebuttal petitioner states that Centennial's arguments are without merit. Petitioner argues that the Commission's ATV Order prohibits the allotment of new television stations within the co-channel separation dis-

tance, as specified in Section 73.610(b) of the Commission's Rules, of the top thirty television markets. Because the allotment, as proposed, would not lie within the freeze area, petitioner states that the proposed allotment does not violate the ATV Order. Petitioner notes in numerous cases, the Commission has permitted new allotments, subject to a site restriction, when the community of license was within a freeze zone, citing *Kennett, Missouri*, 6 FCC Rcd 7119 (1991), *Alamosa, Colorado*, 6 FCC Rcd 4293 (1991), and *Coos Bay, Oregon*, 5 FCC Rcd 999 (1990). In regards to Centennial's second argument concerning the location of a viable transmitter site, petitioner notes that there is a large swath of land that is available for locating transmitter sites which can provide the required city-grade contour at low tower elevations. In sum, petitioner states that Centennial has provided no reasons why the public interest would not be served by allotting Channel 21 to Virginia Beach and believes the Commission should grant the proposal which would provide an additional voice of diversity in the rapidly growing metropolitan area.

4. After consideration of the comments and reply comments filed in this proceeding, we believe that the public interest would be served by the allotment of UHF Channel 21 to Virginia Beach since it would provide the community with an additional local TV service. We note, however, that Centennial has challenged the availability of a theoretical site. While such matters are generally considered at the application stage, as opposed to the allotment stage, we have conducted an engineering analysis regarding the proximity of the airports to the proposed site. Our study has confirmed petitioner's claim that there are other possible sites available that would meet the spacing requirements and provide city grade coverage to Virginia Beach.

5. We also reject Centennial's contention that the allotment of a TV channel to Virginia Beach would violate the Commission's ATV Order. When dealing with communities located within the ATV freeze zone, our decision is based not only on the location of the community itself but whether the transmitter site is inside or outside the freeze zone area. In this case, the allotment of Channel 21 to Virginia Beach is not prohibited because the transmitter site is located beyond the freeze zone. Further to insure that there will be no infringement of the freeze zone prospective applicants should note that any application submitted for Channel 21 at Virginia Beach that does not specify a site beyond the freeze zone will not be accepted for filing during the interim freeze.

6. Channel 21 can be allotted to Virginia Beach consistent with the minimum distance separation requirements of 73.610 and 73.698 of the Commission's Rules with a site restriction of 4.0 kilometers (2.5 miles) south of the community to comply with the terms of the ATV Order.¹

¹ The coordinates for Channel 21 at Virginia Beach are North

Latitude 36-48-38 and West Longitude 75-58-30.

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **June 10, 1996**, the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Virginia Beach, Virginia	21 + , 43 +

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau